

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1768V

UNPUBLISHED

KIMBERLY NEIGHBORS,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 22, 2022

Special Processing Unit (SPU);
Ruling on Entitlement; Concession;
Causation-In-Fact; Influenza (Flu)
Vaccine; Abscess

Leigh Finfer, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Meghan Murphy, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On December 4, 2020, Kimberly Neighbors filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”), and on April 13, 2022, she filed an amended petition. Petitioner alleges that she suffered an abscess that was caused in fact by the influenza (“flu”) vaccine she received in her left shoulder on October 16, 2019. Amended Petition at 1. Petitioner further alleges she received the vaccine in the United States, her abscess and sequelae persisted for more than six months, and neither Petitioner nor any other party has ever filed any action, or received compensation in the form of an award or settlement, for her vaccine-related injury. Amended Petition at ¶¶ 2, 9-11. The case was assigned to the Special Processing Unit of the Office of Special Masters.

¹ Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On March 18, 2022, Respondent filed his Rule 4(c) report in which he concedes that Petitioner is entitled to compensation for an abscess that was caused in fact by the flu vaccine.³ Respondent's Rule 4(c) Report at 1. Specifically, Respondent agreed that "petitioner developed an abscess on her left deltoid, which was more likely than not in fact caused by administration of a flu vaccine at the same location. No other causes for petitioner's abscess have been identified." *Id.* at 5. Respondent further agrees that "petitioner suffered the residual effects or complications of her injury for more than 6 months after the administration of the vaccine [and] based on the record as it now stands, petitioner has satisfied all legal prerequisites for compensation under the Act. The scope of damages to be awarded is limited to petitioner's abscess and its related sequelae only." *Id.* at 5-6.

In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation for an abscess.

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ In his Rule 4 Report, Respondent took the position that Petitioner's injury did not meet the requirements of a Table shoulder injury related to vaccine administration, which was claimed in Petitioner's original petition. However, Petitioner subsequently filed an amended petition asserting only a claim for an abscess caused in fact by the flu vaccine.